

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

David Earl Wattleton,

Petitioner,

v.

Civil No. 11-1396 (JNE/SER)  
ORDER

B. Jett, Warden,

Respondent.

This case is before the Court on a Report and Recommendation issued by the Honorable Steven E. Rau, United States Magistrate Judge, on October 13, 2011. The magistrate judge recommended that David Wattleton's petition under 28 U.S.C. § 2241 be denied and that this action be dismissed with prejudice.<sup>1</sup> Wattleton objected, and Respondent asserted that the Report and Recommendation should be adopted. The Court has conducted a de novo review of the record. *See* D. Minn. LR 72.2(b). Based on that review, the Court adopts the Report and Recommendation [Docket No. 11].<sup>2</sup> Therefore, IT IS ORDERED THAT:

1. Wattleton's Petition under 28 U.S.C. § 2241 for Writ of Habeas Corpus by a Person in Federal Custody [Docket No. 1] is DENIED.
2. This action is DISMISSED WITH PREJUDICE.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: October 31, 2011

s/ Joan N. Ericksen  
JOAN N. ERICKSEN  
United States District Judge

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<sup>1</sup> The Report and Recommendation refers to the petition as one by a person in "state custody." This is an obvious clerical error.

<sup>2</sup> The Court notes the Eighth Circuit has indicated that *Sawyer v. Whitley*, 505 U.S. 333 (1992), cited on page 7 of the Report and Recommendation, "applies only to the sentencing phase of death cases." *Embrey v. Hershberger*, 131 F.3d 739, 740 (8th Cir. 1997) (en banc).